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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,769	08/06/2003	Yusuke Fukuda	500.43007X00	6839

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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.  
1800 DIAGONAL ROAD  
SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER

SUGLO, JANET L

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,769	<b>Applicant(s)</b> FUKUDA ET AL.	
	<b>Examiner</b> Janet Suglo	<b>Art Unit</b> 2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. The action is responsive to the Amendment filed on September 7, 2006. Claim 1 is pending. Claim 1 has been amended. Claims 2-10 have been cancelled.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 1** is rejected under 35 U.S.C. 103(a) as being unpatentable over Aki et al. (US PG Pub 2002/0083169) (hereinafter "Aki") in view of Peebles et al. (US PG Pub 2003/0204789) (hereinafter "Peebles"). Aki teaches a performance information monitoring method using computers ([0002], [0028]), wherein a first computer performs the steps of:

accepting information on a group (network) relating to the first computer ([0029]);  
storing said accepted group information in a storage in the first computer  
(network monitoring system: Fig. 3: 19) ([0040], [0042]);  
accepting performance information sent from a second computer (web client)  
(Fig. 2: 10) ([0028], [0029], [0039], [0042]), [0093]);

comparing performance information of the second computer previously stored in a storage with the performance information accepted from the second computer ([0094], [0095]);

judging whether or not said second computer is included in the information of said group (if an event has occurred from the second computer) when finding a change in the performance information of the second computer based on the comparison result ([0088], [0106]);

transmitting an instruction to the computer included in said group information to change a performance information collection interval according to said judgment result ([0030], [0031], [0042]);

wherein said performance information is monitored to detect an event of an input or output to or from a storage, and said instruction is made to shorten the performance information collection interval when a number of events of the detected input or output to or from the storage exceeds a prescribed threshold value ([0030], [0052], [0054]).

wherein said performance information is monitored to detect a presence or absence of a change in a performance information, and said instruction is made to enlarge the performance information collection interval when the absence of a change in the performance information is detected (Figure 7, 8, 10, 11, 16; [0069]).

Aki does not teach explicitly that said performance information includes at least one of a storage capacity, a storage used capacity, and a storage free capacity. Peebles teaches a diagnostic system which gathers performance information on storage capacity (memory utilization) (Peebles: [0015], [0046]). It would have been

obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aki to include gathering information on storage capacity as done by Peebles because storage information will help diagnose the health of the system and therefore give a more accurate picture of the performance of a computer (Peebles: [0014]).

### ***Response to Arguments***

4. Applicant's arguments filed September 7, 2006 have been fully considered but they are not persuasive.

Applicant argues that neither Aki nor Peebles teach the performance collection interval is enlarged when the absence of a change in capacity type information is detected; however, Applicant's arguments are not well taken. Aki teaches that the performance information collection interval is enlarged when the performance is consistently at a higher level, meaning that the system is operating well (Aki: [0069]). Aki does not specify that the performance information is based upon storage capacity, however the secondary reference, Peebles, is relied upon for gathering storage capacity information (Peebles: [0015]). The combination of Aki and Peebles fulfill the limitations set forth in claim 1 of the current application.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Suglo whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2857

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janet L Suglo  
September 15, 2006



EDWARD RAYMOND  
PRIMARY EXAMINER